In the Matter of Arbitration Between

Anoka County	)	BMS Case No. : 12-PA-0665
"Sheriff Office" or "Employer"	)	Issue: Discipline
	)	Hearing Site: Andover
And	)	Hearing Date: 06-22-2012
	)	Brief Submission Date: 07-06-12
Law Enforcement Labor Services, Inc.,	)	Award Date: 08-20-12
"LELS," "Union" or "Local #222"	)	Hon. Harry S. Crump
	)	Labor Arbitrator
_____	)	_____

JURISDICTION OF ARBITRATOR

Pursuant to Article VII, Grievance Procedure, Section 7.3, Grievance Procedure, Step 3 of the January 1, 2011 Through December 31, 2011 Collective Bargaining Agreement ("CBA") (Joint Exhibit #1) between the Anoka County Sheriff's Office, the Anoka County Board of Commissioners (hereinafter to as the "Employer") and Law Enforcement Labor Services, Inc. Local No. 222 (hereinafter referred to as the "Union") provides for an appeal to arbitration of disputes that are properly processed through the grievance procedure. The Employer and Union (collectively referred to as the "Parties") agreed that this matter is properly before the arbitrator for a "final and binding" determination. The Hon. Harry S. Crump was selected as the arbitrator. Further, the CBA contains a provision requiring the Arbitrator to notify the parties within thirty (30) calendar days of the decision, the parties agreed to waive the thirty (30) calendar days, in lieu of forty (45) calendar days of receipt of the parties Briefs and close of the record.

The Hearing was held on June 22, 2012 at Anoka County Sheriff's Office, in Room #2152, located at 13301 Hanson Blvd NW in Andover MN. Both parties had an opportunity to present evidence in support of their respective positions; witnesses' testimony was sworn and cross-examined; and joint exhibits and Employer's exhibits were introduced into the record.

Post-Hearing briefs were timely filed by postmark and e-mail as of July 06, 2012 and the record was closed as of the same date. On that date, the case record was taken under advisement by the Arbitrator.

APPEARANCES

For the Employer:

Marcy Crain, Assistant County Attorney, Anoka County's Attorney Office
Shelly Orlando, Lieutenant, Anoka County Sheriff' Office
Tom Wells, Chief Deputy, Anoka County Sheriff's Office
Deputy Sheriff Sean Merritt, Anoka County Sheriff's Office

For the Union:

Scott Higbee, LELS Staff Attorney
The Grievant, Anoka County Sheriff Office
Deputy Sean T. Merritt, Anoka County Sheriff Office.

I. INTRODUCTION AND FACTUAL BACKGROUND

Since August 13, 2007, The Grievant had been employed with Anoka County, the Employer, as a Deputy Sheriff. On July 08, 2011 The Grievant was dispatched to Hwy 65 NE and Andover Blvd NE in the City of Ham Lake, MN regarding a personal injury (PI) accident where a 2000 Black Chevrolet Blazer (driven by Gordon E. Muetz, age 69) had rolled-over and crashed into a fence, (at Rapid Sport Marine), 100-yard off the road way. The Black Chevrolet Blazer was heavily damaged and Mr. Muetz had been injured during the roll-over of the Black Blazer. (See Exhibit E-2). On July 8, 2011 The Grievant issued a Careless Driving Citation to Ms. Norris, the driver of a white vehicle that had cut off the Black Blazer, and omitted to check the box marked "personal injury" on the bottom of the Citation.

On October 31, 2011 the Grievant received a written reprimand for failure to recognize the severity of this offense and omitted information that affected the disposition of the criminal case. On November 10, 2011 The Grievant submitted a Step 1 Grievance alleging that this level of discipline was rendered without "just cause" and didn't coincide with the alleged policy violations. The step 1 Grievance was responded to on November 16, 2011 by Commander Kevin R. Halweg, who denied the Step 1

Grievance because of the Grievant multiple errors, and the severity of the errors. On November 21, 2011 the Union submitted, on behalf of the Grievant, a Step 2 Formal Grievance alleging that the Employer violated Article 14 of the CBA which requires discipline "for just cause only". On December 12, 2011 Chief Deputy Tom Wells responded by denying The Grievant Step 2 Grievance because The Grievant had failed to recognize the severity of this offense and omitted information that affected the disposition of the criminal case. Step 3 Grievance was the request for arbitration dated December 16, 2011.

II. POSITION OF EMPLOYER

Summary of Testimony of Lieutenant Shelly Orlando

Lieutenant Shelly Orlando, Anoka County , testified that she is a Lieutenant with the Patrol Division, Anoka County Sheriff and that she is in Grievant chain of command; That in the chain of command, the Sergeant stands one level above the Deputy level, then the Lieutenant is the next immediately level above the Sergeant where Lieutenant Orlando is; that Lieutenant Orlando is over the Patrol Division and that the Grievant is assigned to the Patrol Division; That she has been in Law Enforcement for 18 years, all with Anoka County Sheriff and she started as a Deputy and came up through the ranks;

At the time of the July 8, 2011 personal injury (PI) accident in the City of Ham Lake (Ham Lake), Anoka County Sheriff had contracted with Ham Lake to provide law enforcement services and the Grievant was assigned to patrol Ham Lake; That the Grievant had received on September 14, 2010 a prior Written Reprimand for Falsifying Sickness leave to attend a wedding. See Exhibit E-1. That Lieutenant Orlando was the author of the current Written Reprimand for a Disciplinary Action involving the July 8, 2011 PI accident in Ham Lake. See Joint Exhibit J-4. That Chief Deputy Tom Wells brought the July 8, 2011 PI accident in Ham Lake to the attention of Lieutenant Orlando.

Employer Exhibit E-2 is a group of six photos taken at the PI accident scene depicting the road condition, off-road tire tracks and the wreckage of the 2000 Blazer; that after reviewing the incident reports of Deputies Grievant and Merritt, looking at the accident photos and reviewing other materials available, Lieutenant Orlando thought that

this accident should have been looked at as a possible criminal vehicular operation type of accident given the incident reports, amount of injuries involved and the fact that there was possibly a type of road rage situation going on; that the fact Lieutenant Orlando thought this was possibly a road rage situation was because The Grievant report had indicated that the victim seat belt was attached and the victim's (left) leg was hanging out the (driver's) window, and also, that Chief Deputy Wells had mentioned to Lieutenant Orlando that the victim's leg had to be amputated; that the victim had to be extricated from the Blazer; and that there was great bodily harm. Lieutenant Orlando concluded that because this may have been a road rage situation and very serious injuries involved, that this accident could have potentially been deem to be a felony resulting in substantial bodily harm or great bodily harm; that this PI accident could be an offense of Criminal vehicular operation depending on the severity of injuries. Minn. Stat. § 609.21. See Employer Exhibit E-8

In an accident like this, the Lieutenant would expect the Grievant to first contact his duty sergeant and say there is a possible road rage situation with some very serious injuries, as a result the deputy would be advised to call Criminal Investigation Division (CID) to have a Detective come out and do an investigation of the accident, or the deputy would be advised to call the Crime Lab to come out and take photos to document the scene. The Grievant should have called both the duty Sergeant and CID, however, the Grievant called neither of them.

If this situation was determined not be a felony level offense, then this situation would potentially be a Careless driving offense, a misdemeanor, with a punishment of imprisonment for not more than 90 days or the payment of a fine of not more than $1,000, or both. The Grievant did issue a Careless driving citation to Tiffany Rose Norris, (Norris) the driver of the white vehicle which made a lane change without leaving enough room for Muetz's vehicle and Muetz made an evasive action to avoid a collision with Norris's vehicle. See Joint Exhibits J-2, Minn. Stat. § 169.13, subd. 2. See Employer Exhibit E-7.

Joint Exhibit J-3 is a copy the Citation the Grievant issued by mail to Norris.

The Grievant did not check either the "Box-Endanger person or property or the "Box – Personal injury" on the Citation. Lieutenant Orlando would expect deputies to check boxes in cases like these, which would necessitate a court appearance by the driver.

Lieutenant Orlando summarizes the mistakes that the Grievant made as the following: 1) not contacting the duty Sergeant; 2) not realizing he had a possible Criminal vehicular operation charge; 3) not calling CID or the Crime Lab.; 4) not checking the boxes on the Citation, which would have necessitate a court appearance, at which point, the City Attorney would have seen the boxes checked and referred the matter back to the Sheriff Office for further investigation before going further and reducing the charge to a petty-misdemeanor. If the boxes had been checked the results would be different in this matter.

Written Reprimand, Joint Exhibit J-4, was authored by Lieutenant Orlando and issued to The Grievant for Law or Policy Violated, General Order 2000: 3-6, Work Ethics- Unsatisfactory Performance; and General Order 3800:21, Duties and Responsibilities. (See, also, Exhibits E-3, E-4).

> ***The specific violation under General Order 2000: 3-6, Unsatisfactory Performance indicates:***
>
> > ***-a lack of knowledge of the application of laws required to be enforced;***
> > ***-a failure to take appropriate action on the occasion of a crime, disorder, or other condition deserving police attention.***
>
> ***The specific violation under General Order 3800:21, Duties and Responsibilities indicates:***
>
> > ***All employees, whether on or off duty, shall establish and maintain a working knowledge of Office and divisional policies and procedures, and where applicable, the relevant statutes and ordinances. When required, all employees shall take appropriate action. In the event of improper action or breach of discipline, it shall be presumed that the member was familiar with the law, ordinance, rule, policy or order in question.***

Lieutenant Orlando testified that the Grievant violated General Order 3800:21 for failure to realize that he had a potential felony crime and that a written reprimand was

appropriated because the Grievant failed to realize that had a potentially felony crime; that the Grievant did issue a Citation but he failed to check the appropriate boxes, which could have rectified the situation. She testified that the failure to call a duty Sergeant was not cover by this provision.

Lieutenant Orlando is responsible for writing the written reprimand and meeting with the Grievant to discussing the written reprimand; that the first step of the disciplinary process is the written reprimand.

Joint Exhibit J-6 is a memorandum from Commander Kevin R. Halweg, the Commander of the Patrol Division, to the Grievant denying Step 1 Grievance Response. In the Grievant Grievance he stated that the suspension violates Article 14 of the union contract, as it is discipline without cause and that the level of discipline does not coincide with the alleged policy violations. Commander Halweg was unavailable for the arbitration hearing.

Summary testimony of Wilbur F. Dorn, Jr.

Wilbur F. Dorn has worked as the City Attorney for the City of Ham Lake since 1977 doing civil work and since 1984 doing prosecution work; that the Anoka County Sheriff Office has been under contract with Ham Lake to provide law enforcement services that included patrol services; that Mr. Dorn has worked frequently with the Anoka Sheriff doing prosecution work; that he knows the Grievant, had no trials with him and had seen his citations and reports; that Dorn became aware of this case on October 6, 2011 when a personal injury Lawyer by the name of James Liddell called Mr. Dorn's office about the status of this PI accident of July 8, 2011 case; that a person named Norris had been cited for Careless driving and he wanted to make sure that she was severely punished; that Mr. Liddell said he has a client that was seriously injured in that accident (of July 8, 2011; that Mr. Dorn said he had no file for the Careless driving violation in his office, and that he would look into the matter.

Mr. Dorn searched this matter in MNCIS or the Register of Actions, and found Case No. 02-VB-11-19629 regarding the Careless driving citation issued to Ms. Norris and learned that she had plead Guilty and paid a fine of $185.00 to the clerk of court without having to see a judge; and that the Careless driving violation was entered,

deemed to be Petty Misdemeanor by Rule 23.02 Minn, R. Crim. P; that the boxes were not checked for endanger person of property or property damage; that this was apparently the result of an oversight by the investigating officer in filling out the Citation form. (See Employer Exhibits E-6, E-11);

Careless driving violation issued by citation is payable and automatically reduced to a petty misdemeanor if the fine less than $300.00, the fine amount set for the petty misdemeanor, unless the endangerment box is checked. (See Employer Exhibit E-12);

Employer Exhibit E-5, a letter from Mr. Lindell to Mr. Dorn, indicated the seriousness of his client's injuries, including a muscle strain of left gluteus maximus (minimus-spelling by Mr. Lindell, not found in Cambridge Dictionaries), but is silent on whether his client had to have his left leg amputated. The letter, also, included a statement of Scott Edward Weyek, a witness to the July 8, 2011 PI accident; and finally, he stated that evidence of a criminal prosecution wouldn't be admissible in a civil proceeding in any event.

Employer Exhibit E-6, a letter from Mr. Dorn in reply to Mr. Lindell's letter of October 12, 2011, reflected similar testimony he made during this Arbitration Hearing. Mr. Dorn stated that he had spoken with Chief Deputy Tom Wells of Anoka County Sheriff's Office (ACSO) about the case against Ms. Norris; that the case was over before her first scheduled court appearance; that she paid a fine of $185.00 on August 01, 2011 by mail; that ACSO investigated this accident, and The Grievant issued the Careless Driving citation on July 19, 2011.

Mr. Dorn, also, stated that the normal policy in accident cases is to verify that insurance was in effect and to inquire about any particular issues that may be presented, had that procedure been followed here, there is no question but that his office would have written to Mr. Muetz for input.

As in his letter, Mr. Dorn also testified that what would have been the likely result had the Citation been completed properly is some what speculative, since he never got a chance to review the case; that it is all speculation in the end, because there is no longer a criminal case with which to deal.

Finally Mr. Dorn stated that he had worked with the particular deputy for a couple years now, and (had) found him to be conscientious and devoted to his duty; that Chief

Deputy Tom Wells is second in command to Sheriff Stuart, and that he had made him aware of this situation.

Summary testimony of Chief Deputy Tom Wells

Chief Deputy Tom Wells testified that his current position is Chief Deputy, and second in command of the ACSO; that he is responsible for overseeing the five (5) Divisions of the ACSO, including the Patrol Division, that he his been with the ACSO for 27.5, except for two years with the Department of Correction. Chief Deputy Wells has been a Patrol Deputy, Patrol Sergeant, Patrol Lieutenant, Captain of the Criminal Division, Captain of the Patrol Division, now Chief Deputy, of which 26 years of his career were spent in the Patrol Division.

The Chief Deputy first learned about this matter on October 20, 2011 when he received a call from Mr. Dorn. The Chief Deputy didn't know about this PI accident before getting that call; that Mr. Dorn told the Chief Deputy that a PI accident had occurred in the City of Ham Lake, the extent of the injuries to the victim, a Careless driving citation was issued by The Grievant, the Driver plead Guilty to a Petty Misdemeanor violation, and the he (Dorn) had no opportunity to review/ process the case and maybe looking at making this case a more serious offense, and that justice was not served for the victim; that he gave enough facts, details and information for the Chief Deputy to look further into the case.

ACSO have several policies and procedures in place where any types of major events involving a death or potential death have occurred, Command Reports and Sergeant Reports are completed to notify the next in command to determine what have to be done. ACSO Patrol Division processed daily many types of Incidents and Complaints from the eight Cities and Townships in the Northern Suburbs and ACSO Criminal Division processed daily hundreds of Incidents and Complaints of all types of major Offences and Complaints from 21 Cities within the County; that typically, ACSO Patrol Supervisors or Lieutenants reviewed daily all those cases that have not been charged-out, and then, assigned those cases to Patrol Investigators or Criminal Detective if needed; that typically, when cases are Cleared by Citations or Arrests, no further investigations need to be done, and there are no need to notify Patrol Supervisors. This PI accident case

was not flagged by the system because the PI accident case did not come to the attention of the Supervisors.

Approximately five or six years ago, ACSO started issuing Electronic Citations (E Citations or E Tickets) from the squad cars. There is only one thermo paper ticket or Citation printed in the Squad car and that get issued the driver/offender and that is the only hard copy of the ticket printed. Those Electronic Tickets get forwarded to Lieutenant Jeff (Katters), located in the City of Ramsey, who pushed all E Citations or E Tickets issued in Ramsey County, into Record Management System (RMS) for ACSO, and the RMS in the office of the originating Departments that issued the tickets and also the Clerk of Courts. In this case because a Citation was issued, that cleared the case.

In the Field Training Program, the deputies receive training in filling out Citation forms correctly. In this case, The Chief Deputy had only the two reports of Deputies Grievant and Merritt to look at and it was obvious to him that there was an incident between the two drivers that cause the accident. Once that was established the next step should have been to notify a sergeant, and have CID get a formal statement with more detail involved than a deputy's report where the deputy paraphrase what witness said, and the Crime Lab. may come to the scene of an accident for further investigation.

Deputies wear many hats and are expected render first aid, write and read the reports, establish the level of offense by recognizing misdemeanor and felony offenses and take the appropriate actions, secure the scene, and allow emergency vehicles into the scene, however, Deputies are expected do investigation, that is why Detectives are called out to the scene. If a Deputy was not sure of whether there was a potential felony offense, then he should call the duty Sergeant to make the decision. The mistakes made in this case resulted in ACSO not have enough facts, as a fact finder, to support an appropriate level of offense and sentencing in court, ACSO failed the victim and justice was not done in this case.

Joint Exhibit J-8, Employer's Response to Step II Grievance, The Union made a request that adding a "note to the file" of the Grievant would be sufficient, lieu of a written reprimand. The Employer disagreed and stated that a written reprimand would have been appropriated because of a series of events happened that could have changed the outcome. Employer perceived a failure of the Grievant was not notifying his duty

Sergeant; that the Employer relied upon the Reports of Deputies Grievant and Merritt, the Citation, Documentation the indicated some form of "playing chicken' happened and Ms. Norris cut in front of the other driver (Muetz) and the provision in ***Minn. Stat. § 609.21, Subdivision 1. (1) in a grossly negligent manner,*** that this case could have been potentially a felony offense of Criminal vehicular operation. However, the only documentation referring to playing chicken was found in Ms. Norris's statement to The Grievant that described the incident "as playing chicken".

The Chief Deputy never personally instructed the Grievant of what the significant would be on checking the box marked-personal injury on the Citation and that there is a process where a person is issued a misdemeanor violation that it still could go on the individual record as a petty misdemeanor; that within Joint Exhibit J-4, the Written Reprimand, there is no specific reference for failure to follow any written procedures in the Field Training Manual regarding the two General Orders Violations.

III. POSITION OF UNION

III. POSITION OF UNION WITNESSES

Summary testimony of Deputy Sean T. Merritt

Deputy Sean T. Merritt testified that he has been employed for ten and a half years with ACSO and currently patrol in the City of East Bethel; that on July 8, 2011 he was working patrol in the City of Ham Lake; that he assisted The Grievant with the call involving the accident on July 8, 2011; that he recall that the scene of the accident was located on Hwy 65 north of 147 Avenue; that he reported to accident scene and found a black SUV up against a fence at Rapid Sport Marine; there were significant damage to the vehicle; and he ordered emergency personnel, fire, ambulance and rescuers to respond to the accident scene; that he approached the damage vehicle, accessed the scene, saw one male occupant, the driver, and a couple of people standing nearby; that there was one witness by the name of Scott E. Weyek, who approached Deputy Merritt;

Joint Exhibit J-2 is a Supplemental Report to the original Report written by the Grievant, in that Deputy Merritt assisted lead deputy at the scene; that the supplemental

Report fairly described what Mr. Weyek saw; that Mr. Weyek was southbound in the right lane behind a white passenger car driven by Tiffany Rose Norris. In front of the white vehicle was a black passenger vehicle driven by Gordon Muetz. Weyek stated that the driver of the white vehicle change lanes to the left and began to pass the black vehicle. The driver of the white vehicle then changed lanes to the right and "cut off" the black vehicle. Weyek stated that the driver of the black vehicle swerved to the right to avoid a collision. The driver then swerved to the left. Over corrected to the right and went off the roadway.

Mr. Weyek did not mention or described to Deputy Merritt any type driving conduct by the white vehicle like a road rage situation, multiple lane changes, or that the white vehicle was tailgating black vehicle; that if Weyek had mentioned any driving conduct like a road rage situation, multiple lane changes and tailgating by the white vehicle to Deputy Merritt, that information would be of significant about the driving conduct of the white vehicle, and that he would have included that information in his supplemental report.

Deputy Merritt met briefly met with Ms. Norris when she walked up to Deputy Merritt, identified herself as the driver of the white vehicle, gave Deputy Merritt her name and driving information, which he gave to The Grievant to speak with her; Deputy Merritt knew that this was some sort of traffic violation and understood that The Grievant was going to issued Ms. Norris a Careless driving Citation; that Deputy Merritt agreed with The Grievant decision at the scene to issue Ms. Norris a Careless driving Citation; that Deputy Merritt did meet briefly with Ms. Norris at the scene and there were no indications that she might be under the influence of drugs or alcohol; that Deputy Merritt felt that this type of situation did not warrant a felony charge; and that this type of situation did not require calling a duty Sergeant to the scene to find out how to proceed.

Deputy Merritt testified that he got all the information necessary from the Witness Weyek; that he saw the Citation issued in the case, there was personal injury and he would have check the box marked 'personal injury"; that he would not have checked the box marked "endanger person or property" because there were no contact between the vehicles; that there were no indication at first contact and talking with the driver that this was a fatal accident; that from hindsight, there were significant injuries; that "cutting off"

is a common term up to interpretation by anyone; that changing lanes by "cutting off" is straight forward and that he couldn't determine if 'cutting off was intentional or not without talking with the drivers, nor could Mr., Weyek know the intention of the of the driver of the white vehicle.

Further, Deputy Merritt testified that at the scene Mr. Weyek didn't describe Ms. Norris's vehicle as tailgating within inches behind the bumper of the Black vehicle; that at the scene Mr. Weyek didn't describe both vehicles making simultaneous lane changes from the left lane into the right lane; that at the scene Mr. Weyek didn't identify Ms. Norris's vehicle making lane changes that he would liken to a Nascar driver; that if Mr. Weyek had mentioned any of those elements, Deputy Merritt would have included those elements in his Report; that if he had mentioned any those elements, which would describe additional driving conduct, Deputy Merritt would believe that this was a road rage situation; that at the scene Mr. Weyek had sufficient time to describe that type of driving conduct, if he wanted to do that; that Deputies are trained on how to write complete citations.

Summary testimony of The Grievant

The Grievant testified that he was hired in 2007 as a Deputy with the Anoka County Sheriff Department; That he worked in Court Security and the Patrol Division for one year and has maintained that position to the current time.

The Grievant recalls that on July 08, 2011 he received a call dispatched over his radio as a vehicle personal injury accident with a roll-over; that he arrived on scene with lights and sirens. He positioned his vehicle on the shoulder. And then he could see the vehicle involved off the roadway to the west. We were in the South bound lane of Highway 65 NE just North of Andover Boulevard NE in the City of Ham Lake. The vehicle had crashed into a fence owned by Sport Rapid Marine. He could see tire tracks in the grass as he approached the vehicle. The vehicle had heavy damage due roll-over, He immediately made contact with the only occupant sitting in the driver's seat, Gordon E. Muetz, and checked for injuries. Mr. Muetz had his seat belt still on with his back leaning toward the center console and his leg up on the door window sill with his foot on

the outside. From outside of the vehicle, The Grievant observed that Mr. Muetz had no obvious cuts, trauma or critical injuries visible to his left leg. He was wearing blue jeans that had no obvious cuts in them where The Grievant could actually see his legs.

The Grievant saw that Mr. Muetz had some injury to his head and blood on the side of his face. The Grievant asked him how he was feeling and what kind of pain he was in from the accident; he was talking to The Grievant, who could see that he was still in shock from the accident; that he was not necessarily in any pain or able to describe the pain to The Grievant.

So The Grievant was talking to him about the accident and if he could describe to The Grievant what had happen. Mr. Muetz wasn't sure and couldn't remember what had happened. The Grievant, then, started to ask him other questions to check on his mind and what he could remember. So the Grievant asked him what the day was and information about what time it was; and he had all that information. He was asked where he was coming from and he said his resident and he was able to give his address, which was just NW of the accident scene. Then the Ham Lake's Medical and 'Fire Team came and took over the medical portion.

Then the Grievant began to look for other witnesses at the scene, but none of the bystanders had any first hand knowledge of accident. Deputy Merritt was talking with one witness. Ms. Norris and the Grievant spoke briefly at the scene and there were no indications that Ms. Norris was under the influence of drugs or alcohol.

After clearing the incident the Grievant went back to the substation and spoke to Ms. Norris by phone. She said that she was driving SB on Hwy 65 in the right lane when a vehicle pulled out of a driveway or possibly 153rd Avenue. Because this vehicle pulled out into the lane in front of her that she moved over into the left lane to continue going and not have to slow down. At her speed the black SUV moved up along beside her, so at this point they were parallel along beside each other. She wanted to get back into the right lane, so she sped up to make that maneuver. As she did that the other vehicle also sped up. After that she sped up again and checking in her rear view mirrors and checking over her left shoulder, she believed that there was enough room, so at that time, she made her lane change. After that she looked in her rear view mirror and did not see the vehicle anymore. Looked up to her right then she saw the crash, the vehicle rolling over. Instead

of stopping right there she pulled around the corner into Rapid Sport Marine parking lot and walked up to the crush scene.

After Ms. Norris described the other vehicle had turned out of a driveway or off of 153rd avenue in the lane in front of her, she didn't indicated in anyway that the vehicle had "cut her off"; she didn't indicated that the driver of the other vehicle had, in any fashion, "inconvenienced her driving conduct"; she didn't give any indication that she was 'upset' at the driver of the other vehicle;

In summary, Ms. Norris described that she had moved over into the left lane to avoid merging traffic coming from the right and was intending to move back into the right lane once that vehicle had cleared; that she had some difficulty doing that because the black vehicle kept accelerating up to her speed.

In the Grievant Report, third paragraph down, Ms. Norris;

> stated that she moved over to the left lane when he pulled onto the highway. As he accelerated she was driving side by side with him. She stated that she wanted to move over into the right lane and accelerated to get ahead of him. As she did he also accelerated. This continued and she described it "as playing chicken".

The Grievant understood what Ms. Norris described as playing a game of chicken was when both vehicles were driving side by side parallel to each other and she would speed up and then he would speed up and this continued.

What the Grievant understand as a game of chicken is when both vehicles are coming upon each other from opposite directions and which ever vehicle moves first or last to change direction was the chicken, and the Grievant knew this was not the case or exact type of incident for this crash because both of them were going in the same direction. The Grievant didn't believe that she understood how the game of chicken was applied, but since she did said "as playing chicken" the Grievant felt he had to put "as playing chicken" in his report.

After speaking with Ms. Norris and reviewing Ms. Norris's and Mr. Weyek's statements that were consistent, in part, that both Ms. Norris and Mr. Muetz were going down the road in the SB lanes and she make the move over to the left lane and then back into the right lane in which the witness's statement stated that she had cut off Mr.

Muetz's vehicle. Because of the witnesses' statements and after reviewing the Criminal Statutes, the Grievant believed that a Misdemeanor, Careless Driving Citation was appropriated and necessary for the type of driving conduct committed.

At the time when the Grievant wrote the Misdemeanor Citation he had no idea that Ms. Norris could pay the fine and end up with a Petty Misdemeanor.

Because Ms. Norris's statement indicated that she was looking over her shoulder, and was not driving in a grossly negligent manner when making the lane changes, and was conscious of where the other vehicle was, the Grievant believed that Ms. Norris had taking care and not acted in a grossly negligent manner and therefore, he didn't consider giving her a Citation for Criminal Vehicular Operation. (See Employer Exhibit, E-8, Minn. Stat. § 609.21, Subdivision 1. Criminal Vehicular Operation)

Based on what The Grievant had observed at the scene, talking with Deputy Merritt and talking with Ms. Norris, the Grievant had no sense that this PI accident might be a road rage situation.

On the Citation, the box marked "personal injury" was not checked because of an oversight by the Grievant. (See Employer Joint Exhibit J-3) By not checking that box at the time of preparing the Citation, the Grievant didn't understand that this Citation could be reduced to a petty misdemeanor; that the City Attorney might not pursue an additional investigation; and the only thing he did understood from his training about checking that box was that it would require that person to appear in court before a judge.

At the scene of this accident, the Grievant didn't believe that Mr. Muetz injuries were that severe and that accident investigation are routine calls, the Grievant felt that additional investigation and calling a Sergeant were not necessary for this accident.

Mid to late October was the first time The Grievant had been contacted by anybody from the County about this matter. Sergeant Erickson met with the Grievant about the Citation and coached the Grievant on the importance of being though, complete and checking the boxes.

IV. RELEVANT CONTRACT AND STATUTORY PROVISIONS

JOINT EXHIBIT J-1-COLLECTIVE BARGAINING AGREEMENT (CBA)

The CBA is a Memorandum Of Agreement (MOA) between Anoka County Sheriff's Office, the Anoka County Board of Commissioners and Law Enforcement Labor Services, Inc. Local No. 222 terms January 1, 2011 through December 31, 2011

ARTICLE 14, DISCIPLINE:

The following disciplinary procedures shall apply:

(1) The employer will discipline employees for just cause only. Just cause will be reduced to writing when applied pursuant to this Article. Discipline will be in any one of the following forms:

(d) Written reprimand

ARTICLE 7 GRIEVANCE PROCEDURES

SECTION 7.1 A grievance shall be defined as a dispute or disagreement raised by an employee against the employer involving the violation or application of the specific provisions of this agreement.

SECTION 7.3, …Step 3. ARBITRATION.[1] …If the grievance is not settled … may refer the grievance to arbitration …

Minn. Stat. § 169.13, subd 2 Careless Driving.

[1] **Article 7. SECTION 7.3. Step 3. ARBITRATION provides in part:**

> **The arbitrator shall not have the right to amend, modify, nullify, ignore add to, or subtract from the provisions of this agreement. The arbitrator shall consider and decide only the specific issue(s) submitted, in writing, by the employer and the employee-union, and shall have no authority to make a decision on any other issue(s) not so submitted. … and shall be based solely upon the express terms of this (CBA) agreement and on the facts of the grievance presented. (Joint Exhibit J-1) At the hearing, the parties agreed to a joint statement of the issue and proffered a handwritten submission.**

Any person who operates or halts any vehicle upon any street or highway carelessly or heedlessly in disregard of the rights of others, or in a manner that endangers or is likely to endanger any property or any person, including the driver or passengers of the vehicle, is guilty of a misdemeanor.

Minn. STAT. § 609.21, Subdivision 1. -Criminal Vehicular Operation;

A person is guilty of criminal vehicular operation and may be sentenced as provided in subdivision 1a, if the person causes injury to or the death of another as a result of operating a motor vehicle:

(1) in a grossly negligent manner.

Subd. 1a. Criminal Penalties.

(c) A person who violates subdivision 1 and causes substantial bodily harm to another may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than $10,000, or both.

(d) A person who violates subdivision 1 and causes bodily harm to another may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $3,000, or both.

General Order 2000: Rules of Conduct

2000:3-6 <u>Unsatisfactory Performance</u>

Employees shall maintain sufficient competency to effectively and efficiently perform the duties and responsibilities of their position.

Incompetency and unsatisfactory performance may include, but not be limited to:

- a lack of knowledge of the application of laws required to be enforced;
- a failure to take appropriate action on the occasion of a crime, disorder, or other condition deserving police attention.

3800.2 Duties and Responsibilities

3800.21

All employees, whether on or off duty, shall establish and maintain a working knowledge of Office and division policies and procedures, And when applicable, the relevant statutes and ordinances. When required, all employees shall take appropriate action. In the event of improper action or breach of discipline. It shall be presumed that the member was familiar with the law, ordinance, Rule, Policy or order in question.

V. STATEMENT OF THE ISSUE

(1) Whether the County had just cause to issue the Written Reprimand dated October 31, 2011 to The Grievant;

(2) and, if not what should be the remedy.

VI. ARGUMENT OF EMPLOYER

The Employer argued that there was just cause supporting the reprimand, and it was fair and reasonable. On July 8, 2011 just after 7:00 P.M., the Grievant was dispatched to the intersection of Highway 65 and Andover Boulevard NE in Ham Lake regarding a personal injury accident. When he arrived at the scene, there was a heavily damaged vehicle 100 feet off the roadway. Its driver, Gordon Muetz, age 68, was obviously seriously injured and was "very confused" according to the Grievant report (Exh. #J-2). The victim had to be extricated from his car by emergency personnel and taken by ambulance to the hospital. Mr. Muetz injuries included a traumatic brain injury brain injury and a limb amputation (Exh. #E-5).

The Employer continued to argue that Deputy Sean Merritt assisted at the scene and interviewed witness Scott Weyek. Weyek reported that he saw a car, later determined to be driven by Tiffany Norris behind the victim's car in the right lane. She changed to the left lane, began to pass the victim's car, changed lanes to the right and "cutoff" the victim's car. The victim swerved to the right to avoid a collision, over-corrected and went off the roadway,

The Grievant called Norris. Norris told him that the victim pulled onto the highway in front of her. She moved to the left lane when he pulled onto the highway. According to Norris, she "accelerated to get ahead of him. As she did so, he also accelerated. This continued and she described it as *playing chicken* "(emphasis added).

The Grievant also knew from an independent witness at the scene that 25-year-old Norris "cut off" the victim. "Cut off" suggests an intentional act. At the very; least, it suggested that more investigation was indicated. Norris, who had reason to minimize her driving conduct, described her interaction with the victim as "playing chicken". The victim was more than 40-years older than Norris, and there was no evidence that they knew each other. This suggested that the victim was not playing a game with Norris. Additionally, the victim was too seriously injured and confused to provide information at the scene about what led up to the accident. More investigation was clearly needed.

At this juncture, as Lieutenant Shelly Orlando and Chief Deputy Tom Wells testified, the Grievant should have called his sergeant, who would have called the Central Investigation Division (CID) for further investigation. Alternatively, the Grievant could

have called CID directly. That opportunity was lost because of the he mishandled the situation.

Further investigation was conducted be a civilian investigator 15 days after the accident. The investigator interviewed eyewitness Scott Weyek who provided more detail about Norris disturbing driving conduct. That conduct included tailgating the victim "extremely close," within inches of the victim's bumper and passing the victim's vehicle "close enough to where they could have been kissing bumpers" as she made the hard turn in front of the victim's vehicle. Weyek explained that there was no traffic for at least 200 yards ahead of them, and no one behind them for 200-300 yards except Weyek, who was 40-yards behind them (Exh. #E-5). Norris's driving conduct sounded like classic road rage. This statement shows that if The Grievant had called a sergeant or called CID to the scene, further investigation would have shown that this was potentially a felony-level offense and may have been much more serious than careless driving.

From reading the Grievant incident report, it was obvious to Lieutenant Orlando, Chief Wells and Wilbur Dorn, the city prosecutor, that this may have been a road rage situation, if road rage was involved, Norris' driving conduct may have met the statutory definition of "gross negligence." This may have resulted in charges of Criminal Vehicular Operation Resulting in Great Bodily Harm (CVO) in violation of Minn. Stat. §609.21, subd. 1. Criminal Vehicular Operation is a felony with a presumptive guidelines sentence of four years imprisonment (Exh. #E-8 and E-9).

Instead of recognizing it as a potential CVO and calling his sergeant or CID, The Grievant wrote a citation for careless driving (Exh. #J-3). His mistakes did not end there. The Grievant then failed to check even one of two boxes that would have resulted in a mandatory court appearance for Ms. Norris. The boxes he neglected to check were "personal injury' and 'endanger(ing) person or property." As explained by the prosecutor, by failing to mark either box, the deputy's error caused the citation to be treated as a careless driving offense (no accident, no injury), which is on the State's Payable list (Exh. #E-12). As such, it is a petty misdemeanor, and its penalty is limited to payment of a $185 fine. The prosecutor explained that if The Grievant had checked either box, it would have resulted in a mandatory court appearance. The prosecutor would have read the police reports, recognized that I may have been CVO and would have referred it to

the Sheriff's Office for further investigation. Additionally, the prosecutor would have had input from the victim.

Even if it had been determined that there was insufficient evidence to prosecute Norris for a CVO, there was substantial evidence of misdemeanor careless driving. Misdemeanor conviction for careless driving could have resulted in Jail time up 90 days, a fine of up to $1000 and restitution.

Instead, as the prosecutor explained, Ms. Norris-probably upon the advice of counsel-promptly pleaded guilty to the petty misdemeanor and paid the $185 fine. By doing so, she evaded criminal responsibility by operation of the Double Jeopardy Clause, which prohibited the state from pursuing more serious charges.

We will never know whether additional investigation would have resulted in sufficient evidence to successfully prosecute Ms. Norris of felony charges. What we do know, is that due to Grievant errors, the State was precluded from properly investigation the circumstances of the offense and prosecuting Ms Norris to the full extent of the law.

To summarize, The Grievant committed multiple errors, specifically:

1. failing to recognize this offense as a potential CVO;
2. filing to call his sergeant or CID'
3. Issuing a citation before the offense was properly investigated;
4. Compounding the citation problem by not checking the box for endangering person or property; and
5. Failing to check the box for personal injury.

These multiple errors were violations of General Order 2000:3-6 (regarding unsatisfactory performance-lack of knowledge of application of laws required to be enforced and /or failure to take appropriate action on the occasion of a crime) (Exh. #E-3) and General Order 3800:21 (establishing and maintaining a working knowledge of procedures and relevant statutes and taking appropriate action where required) Exh. #E-4). There was just cause for discipline.

The Employer argued that the level of discipline, a written reprimand, was fair and reasonable under the circumstances.

It is abundantly clear that the Employer's response to this situation was fair and reasonable. As Chief Wells explained, the purpose of discipline is to correct the problem and it should to proportional to the violation. Among the considerations for determining the appropriate level of discipline is the seriousness of the violation and the employee's disciplinary history. For history, The Grievant had a prior written reprimand issued 13 months earlier that involved not being truthful with his supervisor (Exh. #E1).

As for seriousness, by all accounts-even the Grievant-this was a serious matter. Because of his multiple errors, the victim, whose life was forever altered by this accident, did not get his day in court and was denied justice. The prosecutor was placed in the uncomfortable, awkward position of having to explain this unfortunate breakdown in the criminal justice process. The Sheriff's Office was place in a similar position. Moreover, The Grievant mishandling of this case was a bad reflection on his employer.

Giving The Grievant a verbal reprimand or having an informal conversation with him about it would have minimized the seriousness of the violation. A written reprimand was a fair, measured and reasonable response. For all of these reasons, the Employer respectfully requests that the grievance be denied.

VII. ARGUMENT OF THE UNION.

The Union stated that The County of Anoka issued the written reprimand alleging that the Grievant failed to recognize that a roll-over accident, to which he responded on July 8, 2011, possibly rose to the level of a felony under Minn. Stat. §609.21. The Union Contends that just cause did not exist for the written reprimand for several reasons. Primarily, based upon his observations at the scene and investigation of the accident, the Grievant saw no basis for a felony charge, although he did issue a misdemeanor citation under Minn. Stat. §169.13(2). Through circumstances which the Grievant was unaware of and had no training on, the Defendant was able to her citation without appearing before a judge and having the matter entered as a petty misdemeanor on her record.

There is no denying the tragic consequences the accident had for the victim. However, the extent of the victim's injuries is not a relevant factor in assessing whether the defendant operated her vehicle in a grossly negligence manner which would be necessary to support a charge under Minn. Stat. §609.21 subd. 1(1). It is unfair to hold the Grievant accountable for the results of criminal procedures on which he has no control, knowledge or training.

The Union view of the facts in this matter started on July 8, 2011, when The Grievant was dispatched to the scene of an accident which had occurred on southbound Highway 65 near Andover Boulevard, in Ham Lake, Minnesota. At the scene, the Grievant initially tended to Gordon Muetz, the injured driver of a Chevrolet Blazer which had left Highway 65, rolled over and come to rest on a fence about 100 feet off the roadway. Muetz was oriented as to the day and date, was able to explain where he lived, but could not remember what had happened. The Grievant saw that Muetz was injured, but was unaware of the ultimate extent of the injuries. [2] While The Grievant tended to Muetz awaiting the arrival of paramedic Deputy Sean Merritt talked to witnesses to determine what had happened... (See Incident Report, Joint Exhibit J-2).

Deputy Merritt spoke with Scott Weyek, an eyewitness to the accident, who indicated that a white vehicle (ultimately determined to be driven by defendant Tiffany Norris) had changed lanes to the left to pass Muetz's vehicle, but had "cut off" the Muetz vehicle while changing lanes back to the right. Weyek did not provide Deputy Merritt any information that suggested aggressive driving by Norris, let alone conduct equating to "road rage", or which indicated Norris had intentionally cut Muetz off, after speaking with Weyek, Deputy Merritt identified Norris, who had

[2] The Grievant report noted that Muetz "was belted in the driver's seat, with his leg still attached, hanging out the driver's window." In light of testimony which suggested that Muetz's leg was amputated, that statement may have indicated that The Grievant recognized Muetz might lose the leg. The Grievant explained that he used the "leg still attached" phrase to clarify himself because his initial wording that the leg was outside the window might have suggested in had been severed. The Grievant did not understand that Muetz was at risk of losing the leg.
Further, contrary to the testimony of Lt. Orlando, it does not appear that Muetz's leg was actually amputated. In attorney Liddell's description of Muetz's injuries he does not state that a leg was amputated. (Employer Exhibit E-5)

remained at the scene, as the other driver involved and provided her information to the Grievant. (id.)

The Grievant subsequently contacted Norris who explained that she had moved from the right to the left southbound lane of Hwy. 654 when Muetz's vehicle entered traffic at about 153rd, with the intention of moving back to the right hand lane once she had passed it, Norris indicated that she experienced some difficulty getting past the Muetz vehicle which was accelerating, but eventually saw the Muetz vehicle in her rear mirror and made the lane change, When she subsequently saw the Muetz vehicle go off road, she stopped and returned to the site, Norris did describe her inability to complete the lane change back to the right as like "playing chicken," a comment which the Grievant interpreted as descriptive of some difficulty in getting past the Muetz vehicle rather than a suggestion that either Norris or Muetz was deliberately trying to force the other to back down. (id.)

The Grievant explained that he cited Norris for the misdemeanor offense of careless driving rather than a felony charge of criminal vehicular Operation because that is what the facts available to him supported, (Joint Exh. J-3) Norris's explanation of the event was consistent with that of Weyek at the scene and suggested she had inadvertently cut Muetz off making he lane change, the Grievant did not believe there was any indication of "gross negligence" based upon his understanding of that term. Deputy Merritt, the only other officer at the scene, agreed with the charge of careless driving based upon his assessment of the facts. Neither The Grievant nor Deputy Merritt was aware of the legal procedure which ultimately allowed Norris to be convicted of a petty misdemeanor,

The Union argued that the County commenced the disciplinary process against the Grievant after Muetz's personal injury attorney contacted the Ham Lake City Attorney, upset at the level of criminal punishment Norris had received. The attorney provided information concerning the severity of Muetz's injuries, which was not available to the Grievant at the scene. ((ER. Exh. E-5) he also provided a statement from Weyek obtained by a private investigator which unaccountably contained far more detailed and critical comments about Norris's driving conduct than Weyek had

disclosed to Deputy Merritt at the scene. Based upon the foregoing, the County concluded that the Grievant should have recognized the accident potentially involved a felony level offense. LELS believes it is unfair to assess the Grievant actions based on such hindsight.

Weyek's statement is of extremely questionable credibility and in fact confirms the far less critical account he provided to Deputy Merritt. Weyek was asked whether he had reviewed Merritt's report and responded, "Yes, I agree with what I read. My description written down is what I'll repeat or what I saw." (id. at pg. 3 of statement) Weyek was never asked whether he informed Deputy Merritt of the alleged aggressive driving he claimed in the statement, which included tailgating, several abrupt lane changes and NASCAR like moves, or, if not, why.[3] Deputy Merritt testified that if Weyek had provided such information he would have included it in his supplemental report. The Grievant agreed that details concerning aggressive driving would have led him to consider the higher charge.

Lt. Shelley Orlando, who issued the written reprimand, conceded that she was not familiar with the legal definition of "gross negligence." That is significant because the only portion of Minn. Stat. §609.21 which would call for a finding that Ms. Norris had operated a vehicle in a "grossly negligent manner." Gross negligence is substantially higher in Magnitude than ordinary negligence and is defined as very great negligence or absence of even slight care. *State v. Plummer*, 511 N.W.2d 36, 39 (Minn. App. 1994).[4] In criminal vehicular cases, gross negligence requires "the presence of some egregious driving conduct coupled with other evidence of negligence*." State v. Miller*, 471 N.W.2d 380, 384 (Minn. App. 1991). In the situation with which the Grievant was confronted there was no evidence of egregious driving conduct beyond the negligent lane change.[5]

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[3] The statement is also unsworn and appears to be the transcript of a recording. (id.) the private investigator has been contacted by the County in an effort to determine his credibility or the process by which he prepared the statement.

[4] Consistently, the Grievant testified that his understanding of the "gross negligence" standard would be acting without care. Lt. Orlando agreed that an individual who checks their rear mirror prior to a lane change, as Ms Norris claimed she had done would be exercising some degree of care.

[5] Obviously the County would point to the statement of Weyek obtained by Don Johnson, but again Weyek did not make the same incriminating comments at the scene.

State v. Howe, 2012 WL 1914092 (Minn. App., attached), is the most recent Minnesota discussion that LELS finds of the gross negligence requirement under Minn. Stat. §609.21. in that case the driver was speeding, approaching a controlled intersection filled with stopped cars and searching the floor for a cell phone she had dropped. Unlike the situation for Ms. Norris, *Howe* involved multiple negligent acts. LELS has not found any case where a lane change, which inadvertently cuts another off, standing alone, has been found sufficient to satisfy the gross negligence standard, based upon the facts available to the Grievant to perceive a potential felony.

It became clear that the victim and his attorney were greatly concerned that Norris was able to escape a situation, where she was potentially responsible for the infliction of life altering injuries, with only a petty misdemeanor. That is not the fault of The Grievant. The Grievant cited Norris with a misdemeanor which carries the potential for jail time. (Minn. Stat. 609.03) The Grievant testified, and his testimony was not rebutted, that he was unaware that criminal procedures allowed Norris to plead guilty to a petty misdemeanor.

It also appears that the written reprimand against the Grievant was in part based upon the erroneous conclusion that Ms. Norris had admitted "playing chicken" with Metz. Playing chicken in moving vehicles implies an inherently dangerous activity, in which the active parties are accepting the risk of injuries by attempting to force the other to back down. In the reprimand, Lt. Orlando stated that Ms. Norris told the Grievant that, "she began a game of 'chicken' trying to get around (the Muetz) vehicle." (Jt. Ex. 4) At hearing, Lt. Orlando agreed that Ms. Norris had not admitted playing Chicken, but instead had described her difficulties in passing Muetz as like playing chicken, (Jt. Ex. 2) The reprimand was based on a critical misinterpretation as to the nature of Ms. Norris's driving conduct.

The Grievant admitted that he overlooked checking the personal injury box on the citation. The Grievant agreed that based upon his training and experience he understands that it is important to be complete and accurate in completing paperwork.

While the Grievant knew checking the box would require Norris to appear in court, he was unaware that his failure to do so would permit Norris to plead to a petty misdemeanor or preclude the City Attorney from further review. There was no indication that the Grievant had been trained or instructed as to the potential consequences for failing to check the personal injury box. Even if the Grievant had checked the box on the misdemeanor citation, the possibility remained that Norris could appear in court without the matter being brought to the attention of prosecutors. Ham Lake City Attorney Wilbur Dorn testified that had the box been checked, there was a possibility that he or his staff may have reviewed that matter further in which case they may have considered higher charges to be appropriate. Dorn agreed that it was entirely speculative how this process might have played out, since even if Norris appeared in court, she could still have entered a straight guilty plea at her initial appearance and the court could have imposed a sentence without the matter ever being brought to the attention of the Ham Lake City Attorney's Office.[6]

Dorn testified that the system let the victim down in this case. The Grievant is only part of that system. The Grievant was not responsible for the criminal procedures which allow a defendant cited with a misdemeanor offense to be given a petty misdemeanor deal. Chief Deputy Tom Wells testified that a deputy should notify a sergeant if an accident victim is near death and/or if they recognize a possible felony. Neither the Grievant nor Deputy Merritt perceived Muetz to be near death and both testified that they did not see evidence of a possible felony.

The County recognizes the theory of discipline is to impose consequences sufficient so that similar issues do not occur in the future. In this case, where the Grievant had received no training or instructions on the criminal procedures which allowed his misdemeanor citation to be processed as a petty misdemeanor or the potential consequences for failing to check the personal injury box, a coaching letter

[6] If, as the County also speculated, Norris followed the advice of an attorney and paid the scheduled fine to secure a petty misdemeanor conviction and avoid further review of the matter, it is possible that an attorney would have similarly instructed Norris to enter a straight guilty plea at her initial appearance to avoid further review.

would have been entirely sufficient to ensure that in the future the Grievant will fully complete citations. City attorney Dorn recognizes the Grievant to be conscientious and devoted to his duties. (ER.Ex.6) This experience educated the Grievant on the criminal processes which may result from similar situations. The Grievant will carry the lesson forward.

VIII. DISCUSSION, OPINION AND CONCLUSIONS

The issue is: Whether the County had just cause to issue the written reprimand dated October 31, 2011 to the Grievant and if not what should be the remedy.

The CBA, Article 14, (1) requires that the Employer shall discipline Employees for just cause only; the CBA is absent of specific criteria mutually agreed upon or the CBA did not clearly sets forth the standards of just cause; then, the Seven Key Tests, in the form of questions, represent the most specifically articulated analysis of the just cause standard as well as an extremely practical approach. A "no" answer to one or more of the questions means that just cause either was not satisfied or at least was seriously weaken in that some arbitrary, capricious, or discriminatory element was present. Those seven questions are the following:

1. NOTICE: did the Employer give to the employee forewarning or foreknowledge of the possible or probable consequences of the employee's disciplinary conduct?
2. REASONABLE RULE OR ORDER: Was the Employer's rule or managerial order reasonably related to (a) the orderly, efficient, and safe operation of The Employer's business, and (b) the performance that the employer might properly expect of the employee?
3. INVESTIGATION: did the Employer, before administering the discipline to an employee, make an effort to discover whether the employee, did in fact violate or disobey a rule or order of management?
4. FAIR INVESTIGATION: was the Employer's investigation conducted fairly and objectively?
5. PROOF: at the investigation, did the 'judge obtain substantial evidence or proof that the employee was guilty as charged?

6. EQUAL TREATMENT: has the Employer applied its rules, orders and penalties even-handedly and without discrimination to all employees?
7. PENALTY: was the degree of discipline administered by the Employer in a particular case reasonably related to (a) the seriousness of the employee's proven offense, and (b) the record of the employee in his service with the Employer?

The Employer referred to violations of General Order 2000: Rule of Conduct, 2000:3-Unsatisfactory Performance, and 3800:2- (General) Duties and Responsibilities for the alleged errors of The Grievant. The first error (A)-failing to recognize this offense as a potential CVO. In answering questions 4 and 5 of the Seven Test, was the Employer's investigation conducted fairly and objectively and did the judge obtain substantial evidence of proof that the Grievant was guilty as charged-failure to recognize a potential CVO. The answer to both questions are no because the Employer relied on unsworn and unreliable statements taken by a private investigator, who was never contacted by the County in an effort to determine his credibility or the process by which he prepared the statement; the Deputies who interviewed the eye witnesses at the scene found no facts of any driving conduct or behavior necessary to establish and support a gross negligent offense of CVO due to playing chicken or road rage.

Other errors allegedly committed by the Grievant were failure to check the boxes marked personal injury and endangering person or property. Seven Tests, Question #2 is answered in the affirmative, Yes it reasonably related to the performance of that the Employer would expect a Deputy to complete fully and accurately. The Grievant failure to check the box marked personal injury was an oversight of his part.

In regard to the checking the above boxes and applying the first (#1) Question of the Seven Test, Notice, Did the Employer give to The Grievant forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee's conduct. The Answer is no. There are two requirements for notice, notice of Misconduct and what actions can lead to

discipline. The Employer is required to give notice of a prohibited conduct before there is a violation and the consequences of that violation. There was no testimony by the Employer that any one would be discipline for failure to check the boxes; there was training on how to complete the boxes on the citation completely and accurately; and that boxes checked would require the defendant to appear in court.

The other alleged errors of the Grievant were failing to call his sergeant or CID and issuing a citation before the offense was properly investigated. Question #3of the Seven Test, did the Employer before administering discipline to an employee make an effort to discover whether in fact the employee in fact violated or disobey a rule or order of management? The answer is no. because at the accident scene the Grievant felt that the accident was a routine call and the sergeant and CID were not needed; and Question #1of the Seven Test would applied because no notice was given that not calling a sergeant or call CID, that the Grievant could be disciplined.

Based upon the above application of the Seven Tests for Just Cause, Opinion and Conclusions, the Arbitrator finds by a preponderance of the evidence that there was no just cause for the written reprimand of October 31, 2011 to The Grievant.

IX. **AWARD**

Therefore, the Grievance of The Grievant is granted, and the Grievant should be made whole and the written reprimand of October 31, 2011 completely removed from his file.

Issued and ordered on this 20th day of
August 2012 from Savage, Minnesota
__Harry_S. Crump _____
Harry S. Crump, Labor Arbitrator